

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RETAIL BRAND ALLIANCE, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 06-01857
	:	
v.	:	
	:	
ROCKVALE OUTLET CENTER, LP	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Stengel, J.

October 26, 2006

This breach of contract dispute arises out of the terms of a lease and assignment agreement for retail space in a shopping center. Defendant filed a motion to dismiss arguing that Plaintiff assigned its claim to a third party and is therefore barred from bringing this suit. For the reasons described below, I will deny the motion.

I. BACKGROUND¹

Plaintiff Retail Brand Alliance (“RBA”) entered into a written lease agreement (“Lease”) with Defendant Rockvale Outlet Center (“Rockvale”) on October 25, 2004 whereby Rockvale agreed to rent space in Rockvale Square Outlets for RBA to operate a Casual Corner Store. In Section 21.10 of the Lease, Rockvale agreed to pay RBA an Improvement Allowance (“Allowance”) totaling \$340,000 to renovate and improve the

¹The facts are taken from the complaint and are accepted as true for the purposes of this motion.

space. Rockvale was to reimburse RBA by paying the Allowance within 45 days after RBA provided Rockvale with documentation concerning the renovation.

Before the store opened for business in May 2005, RBA hired a general contractor and completed renovations, which totaled \$345,679. On or about August 4, 2005, RBA compiled the necessary paperwork and sent Rockvale a written request for payment of the \$340,000 Allowance. On or about September 3, 2005, Rockvale tendered payment of the Allowance, sending RBA a check for \$340,000. However, Rockvale stopped payment on the check after RBA deposited it and offered no explanation for this action to RBA. Rockvale ignored RBA's subsequent requests to pay.

In late 2005, RBA began exploring the possibility of assigning the Lease to Charming Shoppes, Inc.² ("Charming"). Section 14.01 of the Lease permitted assignment to a third party with Rockvale's consent. Rockvale consented to the assignment. On January 15, 2006, RBA, Rockvale, and Charming executed an Agreement for Assignment and Assumption of Lease ("Assignment Agreement").

In this agreement, Rockvale expressly agreed and consented to RBA assigning the Lease to Charming. RBA continued to comply with all of its obligations under the Lease, including paying rent, through March 31, 2006. Charming assumed all Lease obligations and began paying rent as of April 1, 2006, the effective date of the agreement.

The "Assumption by Assignee" ("Section 4") clause of the Assignment Agreement

²Charming is not a party to the lawsuit, which suggests that Charming does not believe it has a valid claim to the Allowance.

expressly states that as of the effective date of April 1, 2006:

Assignee accepts such assignment by Assignor and assumes all of Assignor's right, title and interest as tenant under the Lease and agrees to perform, fulfill and observe all of the covenants, agreements, warranties, obligations and liabilities of Assignor as tenant under the Lease arising on or after the Effective Date.

RBA contends that the Assignment Agreement only extinguished its rights as a tenant as of the effective date forward. Therefore, the agreement had no effect on RBA's rights or claims, specifically the Allowance, that arose under the Lease before the effective date.

On March 13, 2006, RBA sent a letter to Rockvale demanding payment of the Allowance. Rockvale refused to pay the allowance. RBA filed a complaint on May 3, 2006. Rockvale filed its first motion to dismiss on June 23, 2006.

On July 1, 2006, Charming and RBA entered into an Acknowledgment and Reassignment Agreement ("Reassignment Agreement"), apparently in response to the substantive argument Rockvale makes in its motion to dismiss. In this agreement, Charming states that it has no interest or claim in any rights or claims against Rockvale that arose under the Lease prior to the effective date of April 1, 2006. Charming also specifically states that RBA "is the rightful owner of, and the proper party to pursue, the Allowance Claim." Section 2 of this agreement provides:

If and to the extent the Rockvale Assignment Agreement may be interpreted as having assigned to Charming Shoppes any rights or claims under the Rockvale Lease arising prior to the Effective Date of April 1, 2006 (an interpretation that both Charming Shoppes and RBA reject as incorrect), Charming Shoppes hereby assigns to RBA all such rights and claims.

RBA filed an amended complaint on July 6, 2006. Rockvale filed its second motion to

dismiss on July 26, 2006.

II. STANDARD OF REVIEW

A. Motion to Dismiss Under Rule 12(b)(6)

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). The court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In deciding a motion to dismiss, the court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984). A plaintiff, however, must plead specific factual allegations. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pa. Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995).

III. DISCUSSION

A. RBA did not assign its right to recover the Allowance to Charming.

- (1) Section 4 of the Assignment Agreement is not ambiguous and indicates that the parties did not assign the Allowance.**

Pennsylvania contract law³ permits parties to contract as they desire and binds them to the terms of their contract absent illegality, unconscionability, fraud, duress, or mistake. Mellon Bank v. Aetna Bus. Credit, Inc., 619 F.2d 1001, 1009 (3d Cir. 1980). When construing a contract, a court must give “paramount consideration” to the intent of the parties by recognizing that “[t]he strongest external sign of agreement between contracting parties is the words they use in their written contract.” Id. at 1009-10. Therefore, “[w]hen a written contract is clear and unequivocal, its meaning must be determined by its contents alone.” Id. at 1010. A court should not “torture” the contractual language to create ambiguities where none existed. Wall St. Aubrey Golf v. Aubrey, No. 05-5027, 2006 U.S. App. LEXIS 13817 at *6-7 (3d Cir. June 5, 2006). The interpretation of an unambiguous contract is a matter of law and can be determined in a motion to dismiss. Newman v. Forward Lands, Inc., 430 F. Supp. 1320, 1323 (E.D. Pa. 1977)(citing Haskins v. Point Towing Co., 421 F.2d 532, 536 (3d Cir.)).

Under Pennsylvania law, an assignment is a transfer (of property, a right, or an interest) from one person who is the assignor, to another, who is the assignee. CGU Life Ins. Co. v. Metropolitan Mortg. & Secs. Co., 131 F.Supp.2d 670, 676 (E.D. Pa. 2001). An assignment extinguishes the assignor’s right to performance. RESTATEMENT (SECOND) OF CONTRACTS § 317. Typically, an assignment is of the entire interest unless the assignment is qualified. 131 F.Supp.2d at 676. There are no formal procedural

³Although I cannot find a specific choice of law provision in the contract, both parties argue that the Court should analyze the contract under Pennsylvania law. Therefore, I will apply Pennsylvania law to this dispute.

requirements to be used when qualifying or reserving an assignment of rights under Pennsylvania law. A federal court in New Jersey has noted that “[t]he ‘precise wording’ of the assignment determines its effect.” In re Carretta, No. 97-4727, 1998 U.S. Dist. LEXIS 6744 at *22 (D.N.J. Feb. 6, 1998)(citations omitted).

The crux of this dispute focuses on Section 4 of the Assignment Agreement and the different interpretations offered by RBA and Rockvale. This section, entitled “Assumption by Assignee,” identifies what rights transfer from assignor RBA, to Charming, the assignee. Section 4 provides:

Assignee accepts such assignment by Assignor and assumes all of Assignor’s right, title and interest as tenant under the Lease and agrees to perform, fulfill and observe all of the covenants, agreements, warranties, obligations and liabilities of Assignor as tenant under the Lease arising on or after the Effective Date.

Rockvale, ignoring the “arising on or after the Effective Date” language, argues that this assignment transfers all of RBA’s rights: past, present, and future.⁴ Rockvale’s position is clearly contrary to the plain meaning of the contract and this court will not torture the contract to create ambiguities where none exist. This language is unambiguous and supports RBA’s position that Section 4 only assigns future rights arising after the effective date.

RBA did not assign the Allowance to Charming because its entitlement to the

⁴Rockvale conveniently omits the phrase “arising on or after the Effective Date” when quoting Section 4. Def’s Memo pg. 7.

Allowance arose eight months before April 1, 2006, the effective date of the Assignment Agreement. RBA renovated the store, requested the Allowance, and even received a check from Rockvale five months before the parties signed the Assignment Agreement.

Under the terms of the original lease, RBA had the right to receive the \$340,000 Allowance within 45 days after it remodeled, sent Rockvale appropriate paperwork, and opened the store for business. RBA renovated the store before it opened in May 2005. In the beginning of August 4, 2005, RBA gathered the necessary paperwork and sent Rockvale a request to pay the Allowance. Rockvale tendered payment of the Allowance in September 2005, although it later stopped payment on the check. RBA's right to the Allowance arose before the effective date of the assignment. Therefore, Section 4 of the Assignment Agreement effectively reserved this right for RBA.

(2) Further, the parties' intent clearly indicates RBA did not assign the Allowance to Charming.

A court must give "paramount consideration" to the intent of the parties when analyzing the contract. Mellon Bank, 619 F.2d at 1009. The "circumstances, the situation of the parties, the objects they have in mind and the nature of the subject matter of the contract" act are guideposts for a court when interpreting a contract. Id. at 1011(citations omitted). The circumstances of the lease and assignment indicate that the RBA and Charming, the parties who potentially have a right to collect the Allowance, agree that the Allowance belongs to RBA.

It would be illogical for RBA to assign the Allowance. First and foremost, the purpose of the Allowance was to reimburse RBA for money it had already expended in getting the store ready for its occupancy. The Allowance was also likely a factor in inducing RBA to enter into the contract and negotiating the rental price. RBA promptly sought to collect the Allowance in August 2005, five months prior to the Assignment Agreement. Most striking, Rockvale paid RBA the Allowance, only later stopping payment on the check. Additionally, Rockvale does not advance any substantive arguments that it is not required to pay the Allowance. Rockvale only argues that Charming is the real party in interest.

The behavior of the parties after the lawsuit commenced also suggests that RBA and Charming agree that RBA is entitled to the Allowance. On July 1, 2006, after receiving Rockvale's motion to dismiss, RBA and Charming executed the Reassignment Agreement. In this document, Charming states that it has no interest in the Allowance and RBA is the proper party to pursue the claim. Charming and RBA explain that they did not intend to assign rights and claims under the Lease that arose prior to the April 1, 2006 effective date. The Reassignment Agreement suggests that Charming will not pursue the Allowance claim and views RBA as the rightful owner. The facts and circumstances surrounding the lease and assignment suggest that RBA did not assign the right to collect the allowance. Therefore, I will honor the intent of the parties and deny Rockvale's motion to dismiss as to this count of the complaint.

(3) Since the clear meaning of Section 4 does not assign the Allowance to Charming, the court does not need to determine whether Charming reassigned the right to RBA.

Alternatively, RBA argues that it is the proper party because Charming reassigned the Allowance to RBA in July 2006. Having found that RBA never assigned its right to collect the Allowance, it is unnecessary for this Court to determine the legal effect of the Reassignment Agreement. However, as noted above, the Reassignment Agreement is strong evidence of Charming and RBA's intent in the original Assignment Agreement. Specifically, the Reassignment Agreement clearly indicates that the parties view RBA as the real party in interest and that Charming does not intend to claim the Allowance.

(B) Plaintiff is permitted to plead an unjust enrichment claim in the alternative.

Count two of RBA's amended complaint seeks recovery on a theory of unjust enrichment. Unjust enrichment is a quasi contract remedy that a party can recover against a party who "wrongfully secured or passively received a benefit that would be unconscionable for the party to retain without compensating the provider." Halstead v. Motorcycle Safety Found., Inc., 71 F. Supp. 2d 455, 459 (E.D. Pa. 1999). In contract disputes, plaintiffs are permitted to pursue recovery under both breach of contract and/or unjust enrichment theories. Id. However, the finding of a valid contract prevents a party from recovering for unjust enrichment. Id.

Rockvale does not seem to contest the substance of RBA's unjust enrichment claim. Instead, Rockvale argues that an unjust enrichment claim must fail where a written

contract exists. This is a correct legal statement but does not serve as a basis for dismissing count two of RBA's Amended Complaint. As permitted by the Rule 8 or the Federal Rules of Civil Procedure, RBA pleads this theory "[i]n the alternative, if for any reason the Lease should be held not to be valid or enforceable with respect to RBA's claim." Pl.'s Memo Opp'n Def.'s Mot. Dismiss p. 8.

Moreover, RBA pleads the basic elements of unjust enrichment. Rockvale knew that RBA used its own money to renovate the site and expected to be reimbursed. Pl's Am. Comp. ¶ 44. RBA would not have entered into the Lease without the Allowance or would have negotiated a lower monthly rent payment. Pl's Am. Comp. ¶ 45. RBA asserts that "Rockvale is reaping the benefits of the improvements without paying for them." Pl's Am. Comp. ¶ 46. RBA is permitted to plead unjust enrichment in the alternative. Therefore, count two will not be dismissed.

IV. CONCLUSION

For the reasons stated above, the motion to dismiss is denied.

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v.	:	
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ROCKVALE OUTLET CENTER, LP	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 26th day of October, 2006, upon consideration of Defendant's Motion to Dismiss (Document No. 11) and Plaintiff's response thereto, it is hereby **ORDERED** that the motion is **DENIED**. It is also **FURTHER ORDERED** that Defendant's First Motion to Dismiss (Document No. 8) is **DENIED** as moot.⁵

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.

⁵Rule 15(a) of the Federal Rules of Civil Procedure provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. . . ." FED. R. CIV. P. 15(a). A motion to dismiss under Rule 12(b)(6) for failure to state a claim does not constitute a responsive pleading for purposes of Rule 15(a). Kelly v. Del. River Joint Comm'n, 187 F.2d 93, 94-95 (3d Cir. 1951), cert. denied, 342 U.S. 812 (1951). Plaintiff has therefore properly amended its complaint, and the First Motion to Dismiss the original complaint is dismissed as moot.